

ASSEMBLY BILL

No. 1950

Introduced by Assembly Member Torlakson

February 17, 1998

An act to amend Section 1375 of, and to repeal Section 1368.4 of, the Civil Code, to add Section 664.7 to, and to add Title 7.5 (commencing with Section 576.5) to Part 2 of, the Code of Civil Procedure, and to amend Section 19719 of the Revenue and Taxation Code, relating to liability.

LEGISLATIVE COUNSEL'S DIGEST

AB 1950, as introduced, Torlakson. Liability: construction defects: insurance defense.

(1) Existing law, the Davis-Stirling Common Interest Development Act, prescribes conditions for a common interest development association to satisfy before it commences an action for damages against a builder of the development for a defect in the design or construction of the development.

Existing law also requires the board to provide written notice to members of the association regarding any civil action filed by the association against the declarant or other developer of a common interest development for alleged damage to certain areas or interests that the association is obligated to maintain or repair, as specified.

This bill would revise and recast these provisions to, among other things, extend to 180 days from the delivery of a specified notice the period in which the association, builder, and other parties that may be responsible for the damages,

would be required to attempt to settle the dispute or agree to submit the dispute to alternative dispute resolution.

This bill would also require the parties to a construction defect action, as defined, to meet for the purpose of preparing specified court reports within 60 days after the first service of the first answer by the first answering defendants.

(2) Under existing law, if parties to pending litigation stipulate for settlement of the case, or part thereof, as specified, the court may enter judgment pursuant to the settlement and, if requested, may retain jurisdiction over the parties to enforce the settlement until its full performance.

This bill would authorize the court to also enter this judgment pursuant to the settlement of a pending construction defect action, as defined, if, where a party's contribution is paid on its behalf pursuant to a policy for insurance, the parties stipulate through their respective counsel.

(3) Existing law makes it a misdemeanor for any person to attempt or purport to exercise the powers, rights, and privileges of a corporation that has been suspended.

This bill would exempt from this provision any insurer or counsel retained by an insurer on behalf of the suspended corporation who provides a defense for the suspended corporation in a civil action based upon a claim for personal injury, property damage, or economic losses and prosecutes subrogation, contribution, or indemnity rights in the name of the suspended corporation.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1368.4 of the Civil Code is
2 repealed.

3 ~~1368.4. (a) Not later than 30 days prior to the filing of~~
4 ~~any civil action by the association against the declarant or~~
5 ~~other developer of a common interest development for~~
6 ~~alleged damage to the common areas, alleged damage to~~
7 ~~the separate interests that the association is obligated to~~
8 ~~maintain or repair, or alleged damage to the separate~~



~~interests that arises out of, or is integrally related to, damage to the common areas or separate interests that the association is obligated to maintain or repair, the board of directors of the association shall provide written notice to each member of the association who appears on the records of the association when the notice is provided. This notice shall specify all of the following:~~

~~(1) That a meeting will take place to discuss problems that may lead to the filing of a civil action.~~

~~(2) The options, including civil actions, that are available to address the problems.~~

~~(3) The time and place of this meeting.~~

~~(b) Notwithstanding subdivision (a), if the association has reason to believe that the applicable statute of limitations will expire before the association files the civil action, the association may give the notice, as described above, within 30 days after the filing of the action.~~

SEC. 2. Section 1375 of the Civil Code is amended to read:

1375. (a) Before an association commences an action for damages against a builder of a common interest development based upon a claim for defects in the design or construction of the common interest development, all of the requirements of subdivisions (b) to (g), inclusive, shall be met, except as otherwise provided in this section.

(b) (1) The association shall give written notice to the builder against whom the claim is made. ~~This~~

(A) ~~This~~ notice shall include ~~all~~ both of the following:

~~(A)~~

(i) A preliminary list of defects *and their general locations*.

~~(B) A summary of the results of a survey or questionnaire distributed to homeowners to determine the nature and extent of defects, if this survey has been conducted or a questionnaire has been distributed.~~

~~(C)~~

(ii) Either a summary of the results of testing conducted to determine the nature and extent of defects or the actual test results, if this testing has been conducted.

1 (B) This notice may include a request for the builder
2 to provide the association with any documents that are
3 relevant to the resolution of the dispute regarding the
4 common interest development. These documents may
5 include:

6 (i) A true statement, if applicable, that references all
7 soils and geologic reports by date and name, license
8 number, and business address of the reporting engineer
9 or geologist, that have been prepared specifically for the
10 development, or previously for the site.

11 (ii) A complete set of soils and geologic reports and
12 laboratory data issued for the development or issued
13 previously for the site.

14 (iii) A complete set of grading plans, plot maps, and
15 site plans, including easements, utility locations and
16 specifications, and drainage and landscape architectural
17 plans and specifications.

18 (iv) A complete set of architect's drawings, plans, and
19 specifications, including all structural calculations and
20 any as-built drawings used in the construction of the
21 improvements within the development.

22 (v) A complete set of electrical plans and
23 specifications, plumbing plans and specifications,
24 mechanical and heating, ventilation, and air conditioning
25 (HVAC) calculations, plans, and specifications, and
26 acoustical reports.

27 (vi) A complete set of component specifications,
28 including vendor manuals and installation instructions.

29 (vii) Written warranties of the contractor,
30 subcontractors, suppliers, and manufacturers that are still
31 in effect.

32 (viii) A true statement, including the names of
33 insurers and dates of coverage, of all policies of insurance
34 carried by the developer that were applicable to the
35 project, or in effect during construction of the
36 development.

37 (2) The association's notice shall, upon delivery of the
38 notice to the builder, commence a period of time not to
39 exceed 90 days, ~~unless the association and builder agree~~
40 ~~to a longer period, during which the association and~~

1 ~~builder~~ 180 days from delivery of the notice, during which
2 the association, the builder, and other parties that may be
3 responsible for the damages, including, but not limited to,
4 design professionals, insurance carriers, material
5 suppliers, or subcontractors, shall either, in accordance
6 with the requirements of this section, attempt to settle
7 the dispute or attempt to agree to submit it to alternative
8 dispute resolution. After the expiration of 180 days from
9 the delivery of the notice, the association shall be relieved
10 of any further obligation to satisfy the requirements of
11 this section.

12 (3) (A) Except as provided in this section and
13 notwithstanding any other provision of law, the notice by
14 the association shall, upon mailing, toll all statutory and
15 contractual limitations on actions against all parties who
16 may be responsible for the defects *which may be* claimed,
17 whether named in the notice or not, including claims for
18 indemnity applicable to the claim, for a period of ~~150 days~~
19 ~~or a longer period agreed to in writing by the association~~
20 ~~and the builder~~ 180 days.

21 (B) At any time, the builder may give written notice
22 to cancel the tolling of the statute of limitations provided
23 in this section. Upon delivery of this written cancellation
24 notice, the association shall be relieved of any further
25 obligation to satisfy the requirements of this ~~subdivision~~
26 ~~and subdivisions (c) to (e), inclusive~~ section. The tolling
27 of all applicable statutes of limitations shall cease 60 days
28 after the written notice of cancellation by the builder is
29 delivered to the association.

30 (c) (1) Within 25 days of the date the association
31 delivers the notice required by subdivision (b), the
32 builder may request in writing to meet and confer with
33 the board of directors of the association, and to inspect the
34 project and conduct testing, including testing that may
35 cause physical damage to any property in the
36 development, in order to evaluate the claim. If the
37 builder does not make a timely request to meet and
38 confer with the board of directors of the association, or to
39 conduct inspection and testing, the association shall be
40 relieved of any further obligation to satisfy the

1 requirements of this ~~subdivision and subdivisions (d) and~~
2 ~~(e)~~ section. Unless the builder and association otherwise
3 agree, the meeting shall take place no later than 10 days
4 from the date of the builder's written request, at a
5 mutually agreeable time and place. The meeting shall be
6 subject to subdivision ~~(g)~~ (b) of Section ~~1363~~ 1363.05. The
7 discussions at the meeting are privileged
8 communications and are not admissible in evidence in
9 any civil action, unless the association and builder consent
10 to their admission. The meeting shall be for the purpose
11 of discussing all of the following:

12 (A) The nature and extent of the claimed defects.

13 (B) Proposed methods of correction, to the extent
14 there is sufficient information.

15 (C) Proposals for submitting the dispute to alternative
16 dispute resolution.

17 (D) Requests from the builder to inspect the project
18 and conduct testing.

19 (2) If the builder requests in writing to meet and
20 confer with the board of directors of the association
21 pursuant to paragraph (1) ~~of this subdivision~~, the builder
22 shall deliver the notice provided by the association to the
23 builder pursuant to subdivision (b) to ~~any~~ the following
24 parties:

25 (A) *Any subcontractor, material supplier, design*
26 *professional, or other party which the builder believes*
27 *may be responsible, in whole or in part, for the design,*
28 *construction, or supply of, the building components*
29 *which are the subject of the preliminary list of defects*
30 *included in the notice provided by the association to the*
31 *builder pursuant to subdivision (b). Any subcontractor,*
32 *material supplier, design professional, or other party*
33 *provided this notice by the builder shall submit the notice*
34 *to its insurer. Upon receipt, this insurer shall be obligated*
35 *to attend the meeting pursuant to paragraph (1).*
36 *However, this section shall not be construed to otherwise*
37 *affect the existing obligations of the insurer.*

38 (B) Any insurer that has issued a policy to the builder
39 which imposes upon the insurer a duty to defend the
40 insured or indemnify the insured for losses resulting from

1 the defects identified in the notice required by
2 subdivision (b). The notice by the builder shall, upon
3 receipt, impose upon that insurer any obligation which
4 would be imposed under the terms of the policy if the
5 insured had been served with a summons and complaint
6 for damages. ~~The~~

7 (3) *The builder shall inform the association when the*
8 *builder delivers the notice to each insurer pursuant to this*
9 *paragraph party pursuant to paragraph (2).*

10 (4) *If the builder requests in writing to meet and*
11 *confer with the board of directors of the association, the*
12 *builder shall provide the association on or before the date*
13 *of this meeting with all documents requested by the*
14 *association pursuant to subdivision (b).*

15 (5) *If the builder fails to comply with paragraph (4),*
16 *the association shall be relieved of any further obligation*
17 *to satisfy the requirements of this section.*

18 (d) (1) If the association conducted inspection and
19 testing prior to the date it sent the written notice
20 pursuant to subdivision (b), the association shall, at the
21 earliest practicable date after the meeting held pursuant
22 to subdivision (c), make available for inspection and
23 testing at least those areas inspected or tested by the
24 association. The inspection and testing shall be completed
25 within ~~15~~ 45 days from the date the association makes
26 these areas available for inspection and testing, ~~unless the~~
27 ~~association and builder agree to a longer period.~~ If the
28 builder does not timely complete the inspection and
29 testing, the association shall be relieved of any further
30 obligation to satisfy the requirements of this ~~subdivision~~
31 ~~and subdivision (e)~~ *section*. The manner in which the
32 inspection and testing shall be conducted, and the extent
33 of any inspection and testing to be conducted beyond that
34 which was conducted by the association prior to sending
35 the notice, shall be set by agreement of the association
36 and builder.

37 (2) The builder shall pay all costs of inspection and
38 testing that ~~is~~ *are* requested by the builder, shall restore
39 the property to the condition which existed immediately
40 prior to the testing, and shall indemnify the association

1 and owner of the separate interest for any damages
2 resulting from the testing.

3 (3) Interior inspections of occupied separate interests
4 and destructive testing of any interior of a separate
5 interest shall be conducted in accordance with the
6 governing documents of the association, unless otherwise
7 agreed to by the owner of the separate interest. If the
8 governing documents of the association do not provide
9 for inspection or testing of separate interests, this
10 inspection or testing shall be conducted in a manner and
11 at a time agreed to by the owner of the separate interest.

12 (4) The results of the inspection and testing shall not
13 be inadmissible in evidence in any civil action solely
14 because the inspection and testing was conducted
15 pursuant to this section.

16 (e) (1) Within 30 days of the completion of inspection
17 and testing or within 30 days of a meeting held pursuant
18 to subdivision (c) if no inspection and testing is
19 conducted pursuant to subdivision (d), the builder shall
20 submit to the association all of the following:

21 (A) A request to meet with the board to discuss a
22 written settlement offer.

23 (B) A written settlement offer, and a concise
24 explanation of the specific reasons for the terms of the
25 offer. This offer may include an offer to submit the
26 dispute to alternative dispute resolution.

27 (C) A statement that the builder has access to
28 sufficient funds to satisfy the conditions of the settlement
29 offer.

30 (D) A summary of the results of testing conducted for
31 the purpose of determining the nature and extent of
32 defects, if this testing has been conducted, unless the
33 association provided the builder with actual test results
34 pursuant to subdivision (b), in which case the builder
35 shall provide the association with actual test results.

36 (2) If the builder does not timely submit the items
37 required by this subdivision, the association shall be
38 relieved of any further obligation to satisfy the
39 requirements of this subdivision only.



(3) No less than 10 days after the builder submits the items required by this paragraph, the builder and the board of directors of the association shall meet and confer about the builder's settlement offer, including any offer to submit the dispute to alternative dispute resolution.

(f) (1) At any time after the notice required by subdivision (b) is delivered to the builder, the association and builder may agree in writing to modify or excuse any of the time periods or other obligations imposed by this section, *except for the 180-day limitation described in subdivision (b).*

(2) Except for the notice required pursuant to subdivision (g), all notices, requests, statements, or other communications required pursuant to this section shall be delivered by one of the following:

(A) By first-class registered or certified mail, return receipt requested.

(B) In any manner in which it is permissible to serve a summons pursuant to Section 415.10 or 415.20 of the Code of Civil Procedure.

(g) ~~If (1) Within 30 days after the board of directors of the association accepts or rejects a settlement offer presented at the meeting held pursuant to subdivision (e), the board shall comply with the requirements of paragraph (1) of this subdivision. If the association is relieved of its obligation to satisfy the requirements of subdivisions (a) to (e), inclusive, before all those requirements are satisfied, the association shall comply with the requirements of paragraph (2) of this subdivision. Under no circumstances shall the association be required to comply with both paragraph (1) and paragraph (2) of this subdivision.~~

~~(1) (A) If the association's board of directors rejects a settlement offer presented at the meeting held pursuant to subdivision (e), the board shall hold a meeting open to each member of the association. The meeting shall be held no less than 15 days before the association commences an action for damages against the builder.~~

1 ~~(B) No less than 15 days before this meeting is held, a~~
2 ~~written notice shall be sent to each member of the~~
3 ~~association specifying all of the following:~~

4 ~~(i) That a meeting will take place to discuss problems~~
5 ~~that may lead and at least 30 days prior to the filing of a~~
6 ~~civil action, and the time and place of this meeting.~~

7 ~~(ii) described in subdivision (a), the board shall notify~~
8 ~~the members of the association that a meeting will be held~~
9 ~~to discuss all of the following:~~

10 ~~(A) The preliminary list of defects provided by the~~
11 ~~association to the builder.~~

12 ~~(B) The terms of the settlement offer or agreement.~~

13 ~~(C) The reasons for the board's acceptance or~~
14 ~~rejection of the settlement offer.~~

15 ~~(D) The options, including civil actions, that are~~
16 ~~available to address the problems, including the filing of~~
17 ~~a civil action preliminary list of defects and a statement~~
18 ~~of the various alternatives that are reasonably foreseeable~~
19 ~~by the association to pay for those options and whether~~
20 ~~these payments are expected to be made from the use of~~
21 ~~reserve account funds or the imposition of regular or~~
22 ~~special assessments, or emergency assessment increases.~~

23 ~~(iii) The complete text of any written settlement offer,~~
24 ~~and a concise explanation of the specific reasons for the~~
25 ~~terms of the offer submitted to the board pursuant to~~
26 ~~paragraph (1) of subdivision (e), received from the~~
27 ~~builder and of any offer by the builder to submit the~~
28 ~~dispute to alternative dispute resolution.~~

29 ~~(iv) The~~

30 ~~(2) Written notice of the meeting shall be sent to each~~
31 ~~member of the association no less than 15 days before the~~
32 ~~meeting is held. This notice shall include the terms of the~~
33 ~~settlement offer or agreement, the options, including~~
34 ~~civil actions, that are available to address the preliminary~~
35 ~~list of defects, a list of documents provided by the~~
36 ~~association to the builder pursuant to subdivision (b) and~~
37 ~~a list of any other documents provided by the association~~
38 ~~to the builder pursuant to subparagraph (A) of paragraph~~
39 ~~(1) of subdivision (b), and information about where and~~

1 when *the* members of the association may inspect—those
2 *these* documents.

3 ~~(C)~~

4 (3) *The contents of the notice and the discussions at*
5 *the meeting are privileged communications and are not*
6 *admissible in evidence in any civil action. This privilege*
7 *may be waived, however, by the holder of the privilege.*
8 *This section may not be construed to impose upon the*
9 *association a duty to disclose these communications to any*
10 *person other than a member of the association.*

11 (4) The builder shall pay all expenses attributable to
12 sending the ~~settlement offer and any offer for alternative~~
13 ~~dispute resolution~~ notice to all members of the
14 association. The builder shall also pay the expense of
15 holding the meeting, not to exceed three dollars (\$3) per
16 ~~association member of the association.~~

17 ~~(D) The discussions at the meeting and the contents~~
18 ~~of the notice and the items required to be specified in the~~
19 ~~notice pursuant to subparagraph (B), are privileged~~
20 ~~communications and are not admissible in evidence in~~
21 ~~any civil action, unless the association consents to their~~
22 ~~admission.~~

23 ~~(E) Compliance with this paragraph shall excuse the~~
24 ~~association from satisfying the requirements of Section~~
25 ~~1368.4.~~

26 ~~(2) If the association is relieved of its obligation to~~
27 ~~satisfy the requirements of subdivisions (a) to (e),~~
28 ~~inclusive, before all those requirements have been~~
29 ~~satisfied, the association may commence an action for~~
30 ~~damages against the builder 30 days after sending a~~
31 ~~written notice to each member specifying all of the~~
32 ~~following:~~

33 ~~(A) The preliminary list of defects provided by the~~
34 ~~association to the builder pursuant to subdivision (b), and~~
35 ~~a list of any other documents provided by the association~~
36 ~~to the builder pursuant to subdivision (b), and~~
37 ~~information about where and when members of the~~
38 ~~association may inspect those documents.~~

39 ~~(B) The options, including civil actions, that are~~
40 ~~available to address the problems.~~

~~(C) A statement that if 5 percent of the members of the association request a special meeting of the members to discuss the matter within 15 days of the date the notice is mailed or delivered to the members of the association, a meeting of the members shall be held, unless governing documents of the association provide for a different procedure for calling a special meeting of the members, in which case, the statement shall inform the members of that procedure.~~

~~(D) Compliance with this paragraph shall excuse the association from satisfying the requirements of Section 1368.4.~~

(5) Notwithstanding the requirements of this subdivision, if the association has reason to believe that the applicable statute of limitations will expire before the association files a civil action, the association may give the notice provided for in this subdivision within 30 days after the filing of the action.

(h) (1) The only method of seeking judicial relief for the failure of the association to comply with this section shall be the assertion, as provided for in this subdivision, of a procedural deficiency to an action for damages by the association against the builder after such an action has been filed. A verified application asserting such a procedural deficiency shall be filed with the court no later than 90 days after the answer to the plaintiff's complaint has been served, unless the court finds that extraordinary conditions exist.

(2) Upon the verified application of the association or the builder alleging substantial noncompliance with this section, the court shall schedule a hearing within 21 days of the application to determine whether the association or builder has substantially complied with this section. The issue may be determined upon affidavits or upon oral testimony, in the discretion of the court.

(3) (A) If the court finds that the association did not substantially comply with this section, the court shall stay the action for up to 90 days to allow the association to establish substantial compliance. The court shall set a hearing within 90 days to determine substantial

1 compliance by the association. At any time, the court
2 may, for good cause shown, extend the period of the stay
3 upon application of the association.

4 (B) If, within the time set by the court pursuant to this
5 section, the association has not established that it has
6 substantially complied with this section, the court shall
7 determine if, in the interest of justice, the action should
8 be dismissed without prejudice, or if another remedy
9 should be fashioned. Under no circumstances shall the
10 court dismiss the action with prejudice as a result of the
11 association's failure to substantially comply with this
12 section. In determining the appropriate remedy, the
13 court shall consider the extent to which the builder has
14 complied with this section.

15 (C) If the alleged noncompliance of either the builder
16 or the association resulted from the unreasonable
17 withholding of consent for inspection or testing by an
18 owner of a separate interest, it shall not be considered
19 substantial noncompliance, provided that the party
20 alleged to be out of compliance did not encourage the
21 withholding of consent.

22 (4) If the court finds that the builder did not pay all of
23 the costs of inspection and testing pursuant to paragraph
24 ~~(3)~~ (2) of subdivision ~~(a)~~ (d), or that the builder did not
25 pay its required share of the costs of holding the meeting
26 and of all expenses attributable to sending the settlement
27 offer pursuant to ~~subparagraph (C) of paragraph (1)~~ (4)
28 of subdivision (g) of this section, the court shall order the
29 builder to pay any deficiencies within 30 days, with
30 interest, and any additional remedy which the court
31 determines, in the interest of justice, should be fashioned.

32 (i) *The amendments made to this section by an act*
33 *enacted within the second calendar year of the 1997-98*
34 *Regular Session shall not be construed to apply to the*
35 *resolution of a dispute pursuant to this section if the*
36 *association mailed its notice pursuant to subdivision (b)*
37 *prior to January 1, 1999.*

38 (j) As used in this section:

39 (1) "Association" shall have the same meaning as
40 defined in subdivision (a) of Section 1351.

(2) “Builder” means the declarant, as defined in subdivision (g) of Section 1351.

~~(D)~~

(3) “Common interest development” shall have the same meaning as in subdivision (c) of Section 1351, except that it shall not include developments or projects with less than 20 units.

SEC. 3. Title 7.5 (commencing with Section 576.5) is added to Part 2 of the Code of Civil Procedure, to read:

TITLE 7.5. CONSTRUCTION DEFECT ACTION

576.5. (a) Within 60 days after service of the first answer by the first answering defendants in a construction defect action, filed on or after January 1, 1999, counsel for each party served with the action, all named parties served in the action, and all insurance representatives of any parties served in the action, if any, shall meet to make the initial report required pursuant to subdivision (c) and prepare a joint report to be submitted to the court pursuant to subdivision (d). Counsel for the plaintiff shall have the duty of scheduling the meeting, and, where there are multiple defendants and cross-defendants, shall take all reasonable steps to ensure that the scheduling of the meeting will permit counsel, the parties, and the insurance representatives to attend. These steps shall include, but are not limited to, notifying each defendant of the scheduled meeting within five days after service of each defendant’s answer. Counsel for cross-complainants, if any, shall be responsible for notifying cross-defendants of the scheduled meeting within five days after service of each cross-defendant’s answer. Where necessary, in actions where there are multiple defendants, and upon a showing of good cause, counsel for the plaintiff may apply, on an ex parte basis, for a reasonable extension of time within which to hold the early meeting.

(b) If the parties to the suit stipulate that the parties have substantially complied with Section 1375 of the Civil Code, the parties may, within the 60-day time limitation

1 described in subdivision (a), submit a report to the court
2 that provides the information described in subdivision
3 (c) and any other information which may be helpful to
4 the court in setting the case for conference. Upon
5 submission of this report, the parties may, within this
6 60-day time limitation, request permission to bypass the
7 early meeting requirement of this section. In considering
8 this request, the court shall determine whether an early
9 meeting of parties will advance judicial economy.

10 (c) During the early meeting of parties, the parties
11 shall discuss and report to the court on all of the following
12 issues:

13 (1) Adoption of alternative dispute resolution
14 procedures, including prediscovery settlement
15 discussions.

16 (2) A preliminary discovery plan and schedule,
17 including whether discovery should be conducted in
18 phases and, if so, the order of discovery, and whether
19 discovery should be limited by order of the court and a
20 proposed discovery cut-off date.

21 (3) Adoption of a case management order.

22 (4) Trial estimates, to the extent known.

23 (5) A proposed schedule for court approval to add any
24 new parties by any of the existing parties.

25 (d) Within 14 days after the early meeting of parties,
26 those who attended the early meeting are mutually
27 obligated to file a Joint Report of Early Meeting with the
28 court. The Joint Report of Early Meeting shall report on
29 all matters described in subdivision (c), and any other
30 information which may be helpful to the court in setting
31 the case for a status conference.

32 (e) Counsel for plaintiff and each cross-complainant
33 shall be responsible for giving notice of the requirements
34 of this section to counsel for each defendant along with
35 the service copy of any complaint or cross-complaint.

36 (f) The filing of an amended pleading shall not impose
37 any obligations pursuant to this section, except that
38 plaintiffs shall have an affirmative duty to schedule an
39 additional meeting pursuant to subdivision (a), and
40 counsel for plaintiffs and cross-complainants shall be

1 responsible for notifying defendants and
2 cross-defendants, respectively, of the scheduled
3 additional meeting.

4 (g) Upon noticed motion, the court shall have the
5 power to issue monetary or pleading sanctions for any
6 violation of this section by any served party.

7 (h) As used in this section, “construction defect
8 action” shall mean any civil action that seeks monetary
9 recovery against a developer, builder, design
10 professional, general contractor, material supplier, or
11 subcontractor of any residential dwelling based upon a
12 claim for alleged defects in the design or construction of
13 the residential dwelling unit.

14 SEC. 4. Section 664.7 is added to the Code of Civil
15 Procedure, to read:

16 664.7. (a) Notwithstanding Section 664.6, if parties to
17 a pending construction defect action stipulate personally
18 or, where a party’s contribution is paid on its behalf
19 pursuant to a policy of insurance, the parties stipulate
20 through their respective counsel, in a writing signed by
21 the parties outside the presence of the court or orally
22 before the court, for settlement of the case, or part
23 thereof, the court, upon motion, may enter judgment
24 pursuant to the terms of the settlement. If requested by
25 the parties, the court may retain jurisdiction over the
26 parties to enforce the settlement until performance in full
27 of the terms of the settlement.

28 (b) It is the intent of the Legislature that this section
29 modify the holding of *Levy v. Superior Court* (1995), 10
30 Cal. 4th 578, regarding the authority of counsel in a
31 construction defect action to bind a party to a settlement.

32 (c) For purposes of this section, “construction defect
33 action” shall mean any civil action that seeks monetary
34 recovery against a developer, builder, design
35 professional, general contractor, material supplier, or
36 subcontractor of any residential dwelling based upon a
37 claim for alleged defects in the design or construction of
38 the residential dwelling unit.

39 SEC. 5. Section 19719 of the Revenue and Taxation
40 Code is amended to read:

1 19719. (a) Any person who attempts or purports to
2 exercise the powers, rights, and privileges of a
3 corporation that has been suspended pursuant to Section
4 23301 or who transacts or attempts to transact intrastate
5 business in this state on behalf of a foreign corporation,
6 the rights and privileges of which have been forfeited
7 pursuant to the section, is punishable by a fine of not less
8 than two hundred fifty dollars (\$250) and not exceeding
9 one thousand dollars (\$1,000), or by imprisonment not
10 exceeding one year, or both fine and imprisonment.

11 (b) *This section shall not apply to any insurer, or to*
12 *counsel retained by an insurer on behalf of the suspended*
13 *corporation, who provides a defense for a suspended*
14 *corporation in a civil action based upon a claim for*
15 *personal injury, property damage, or economic losses*
16 *against the suspended corporation, and, in conjunction*
17 *with this defense, prosecutes subrogation, contribution,*
18 *or indemnity rights against persons or entities in the*
19 *name of the suspended corporation.*

20 (c) *Nothing in this section shall create or limit any*
21 *obligation upon an insurer to defend a suspended*
22 *corporation.*

